

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GARRY F. MCCARTHY,
Superintendent of Police of the City of Chicago,

Plaintiff,

v.

TARIC WEBB and THE POLICE BOARD OF
THE CITY OF CHICAGO

Defendants

No. 2015 CH 2895

ORDER

This cause coming to be heard on the Complaint for Administrative Review of Plaintiff, Garry F. McCarthy, Superintendent of Police of the City of Chicago, due notice having been given and the Court having considered the briefs, arguments and the administrative record, it is hereby ordered:

1. For the reasons stated on the record, the decision of the Police Board of the City of Chicago with respect to Charge 1, Count I, Charge 2 and Charge 3, all pertaining to Defendant Webb's residency, is affirmed because the decision is not against the manifest weight of the evidence, clearly erroneous or contrary to law.
2. For the reasons stated on the record, the decision of the Police Board of the City of Chicago with respect to Charge 1, Count II, pertaining to Defendant Webb registering his car at an address other than his domicile address, is reversed in so far as the Board found no violation because Defendant Webb later corrected the registration. The matter is remanded to the Board with directions to 1) determine whether the evidence in the existing administrative records establishes a violation of Charge 1, Count II on a basis other than the one articulated by the Board in its original decision; and 2) if it does, what sanction is appropriate, if any.

Dated: _____

JUDGE RITA M. NOVAK
Rita M. Novak
Judge Presiding
NOV 12 2015
Circuit Court-1741

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4

5 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
6 COUNTY DEPARTMENT - CHANCERY DIVISION
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9 GARRY McCARTHY,)
10 SUPERINTENDENT,)
11 Plaintiff,) No. 2015 CH 02895
12 vs.)
13 TARIC WEBB,)
14 Defendant.)
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17 REPORT OF PROCEEDINGS at the hearing of
18 the above-entitled cause before the Honorable RITA
19 M. NOVAK, Judge of the said Court, on the 12th of
20 November, 2015, at the hour of 10:30 a.m.
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 WILLIAMS, MONTGOMERY & JOHN, LTD.,</p> <p>4 (233 South Wacker Drive, Suite 6100, Chicago,</p> <p>5 Illinois 60606) by:</p> <p>6 MS. MEGAN ZMICK,</p> <p>7 mzmick@willmont.com,</p> <p>8 Appeared on behalf of the plaintiff;</p> <p>9</p> <p>10 THE HERBERT LAW FIRM,</p> <p>11 (206 South Jefferson Street, Suite 100,</p> <p>12 Chicago, Illinois 60661,</p> <p>13 312.655.7660) by:</p> <p>14 MR. DANIEL Q. HERBERT,</p> <p>15 dan.herbert@danherbertlaw.com</p> <p>16 MS. LIZ FLEMING,</p> <p>17 MS. RACHEL JOHNSON,</p> <p>18 Appeared on behalf of the defendant.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 manifest weight of the evidence.</p> <p>2 The superintendent's argument is,</p> <p>3 essentially, that there was overwhelming evidence</p> <p>4 of his residency as a result -- residency at a</p> <p>5 suburban address rather than the Chicago address</p> <p>6 that he claimed was his residence because his --</p> <p>7 because the surveillance that took place at the</p> <p>8 suburban address established that he went there</p> <p>9 frequently after his work schedule, remained there</p> <p>10 for a number of hours and, therefore, that was</p> <p>11 sufficient to overcome all of the other evidence</p> <p>12 that was presented, including evidence of</p> <p>13 neighbors, family members, his estranged wife</p> <p>14 and -- that testified before the Board with</p> <p>15 testimony that indicated that, in fact,</p> <p>16 Officer Webb resided at the Chicago address and the</p> <p>17 arrangement that was made there to live with an</p> <p>18 aunt of his former spouse.</p> <p>19 One of the persons who testified and who</p> <p>20 lived in the building with him -- the building is a</p> <p>21 two- or three-flat depending on how you count the</p> <p>22 units -- one of the persons who testified was, in</p> <p>23 fact, herself a Chicago police officer.</p> <p>24 So the Board took all of this evidence</p>
<p style="text-align: right;">Page 3</p> <p>1 THE CLERK: McCarthy versus Webb.</p> <p>2 MS. ZMICK: Megan Zmick on behalf of the</p> <p>3 superintendent.</p> <p>4 MR. HERBERT: Good morning, your Honor. Dan</p> <p>5 Herbert and Rachel Johnson and Liz Fleming on</p> <p>6 behalf of the respondent, the officer.</p> <p>7 THE COURT: All right. Good morning,</p> <p>8 everyone. The matter is before the Court on the</p> <p>9 superintendent complaint for administrative review</p> <p>10 of a decision of the Chicago Police Board. I have</p> <p>11 read the briefs and the record, so I am familiar</p> <p>12 with the both the arguments and the evidence that</p> <p>13 was presented below.</p> <p>14 Would you like to begin?</p> <p>15 MS. ZMICK: Unless you have specific</p> <p>16 questions, we are both willing to stand on the</p> <p>17 briefs, unless you want further argument.</p> <p>18 THE COURT: No. I do have one issue -- well,</p> <p>19 I am fine with reaching a decision based on the</p> <p>20 papers that the parties presented.</p> <p>21 And my decision would be as follows:</p> <p>22 With respect to the charges that are</p> <p>23 based solely on the residency of Officer Webb, I</p> <p>24 find that the Board's decision is not against the</p>	<p style="text-align: right;">Page 5</p> <p>1 and evaluated it and decided that on balance it</p> <p>2 accredited and waived the testimony of the live</p> <p>3 witnesses over the evidence that came in on the</p> <p>4 surveillance.</p> <p>5 I think the Board's decision was a</p> <p>6 permissible one because there was evidence in the</p> <p>7 record that the circumstances under which</p> <p>8 Officer Webb was going to the suburban address was</p> <p>9 to care for his son because his estranged wife was</p> <p>10 experiencing some significant health problems and</p> <p>11 that she was in the hospital during a period of</p> <p>12 time that the surveillance was taking place.</p> <p>13 In addition, I think that the Board</p> <p>14 could have concluded that the surveillance at the</p> <p>15 Chicago address was really not as thorough, did not</p> <p>16 occur over the longest period of time, and could</p> <p>17 have, then, therefore, discounted the conclusions</p> <p>18 that the investigators made with respect to his</p> <p>19 nonresidence at that address.</p> <p>20 So each one of the charges, in whole or</p> <p>21 in part, depends on the determination of whether or</p> <p>22 not Officer Webb resided in Chicago or in the</p> <p>23 suburban community and, really, in the end it was a</p> <p>24 determination of facts where the facts, in my view,</p>

<p style="text-align: right;">Page 6</p> <p>1 were disputed and where the authority of the Board 2 as the fact-finder is really one that permits it to 3 assign credibility and assign weight to be given to 4 various pieces of the evidence that was submitted 5 to it.</p> <p>6 As I read the record, I felt that it 7 really was very much a determination, very typical 8 of what a fact-finder has to make in all cases and 9 that is some evidence seems to be worthy of greater 10 weight than others and that is precisely what the 11 board did in making its determination.</p> <p>12 I must, however, take issue with the 13 Board on the car registration. This one, I think, 14 is an error of law and subject to de novo review.</p> <p>15 The charge was that there was a 16 violation of -- Rule 1 is violation of the law, 17 isn't it?</p> <p>18 MS. ZMICK: Yes.</p> <p>19 THE COURT: Was a violation of the law.</p> <p>20 So the issue was whether or not a car 21 that Officer Webb bought was registered -- was not 22 his domicile address.</p> <p>23 What the Board concluded was they made 24 no determination on whether or not the car was</p>	<p style="text-align: right;">Page 8</p> <p>1 registered at an address other than the domicile 2 address.</p> <p>3 My further concern is that this 4 registration occurred in the area of three years 5 after the individual -- the officer moved from the 6 address on 96th Street that he claimed -- that he 7 put on the car registration and that to me gives me 8 significant pause even in terms of remanding for 9 further findings. Certainly by that date, one 10 would know where his residence was or his domicile 11 was under the language of the statute.</p> <p>12 So let me just go on to discuss the 13 statute a little bit further. Section 3-407 of the 14 Vehicle Code provides that every owner of a vehicle 15 subject to registration under this code shall make 16 application to the Secretary of State for 17 registration of such vehicle upon the appropriate 18 form or forms furnished by the Secretary of State. 19 Every such application shall bear the signature of 20 the owner written with pen and ink and contained, 21 one, the name, domicile address as defined in 22 Section 1-115.5 of this code. Section 1-115.5 of 23 this code defines domicile as follows. 24 This is a quote. A true fixed and</p>
<p style="text-align: right;">Page 7</p> <p>1 registered at an address other than his domicile 2 address. They, in a sense, reached the 3 determination that it was corrected during the 4 course of the investigation and, therefore, there 5 was no violation established. I don't think that's 6 correct. I think that was an error of law on the 7 Board's part.</p> <p>8 The issue I have been struggling, 9 frankly, certainly based on the reversal of that 10 charge, the case needs to be remanded. So what my 11 struggle has been -- and I'll give the parties an 12 opportunity to respond to this -- is whether or not 13 the case would be remanded to determine what, if 14 any, sanctions should be resulted from that 15 reversal or whether or not there is the need for 16 the Board to make any further findings in light of 17 the Court's reversal. This would not permit the 18 Board to take new evidence.</p> <p>19 I think the record -- everyone had a 20 fair opportunity to present whatever evidence they 21 needed to present. It only whether or not based on 22 the evidence that is in the record whether or 23 not -- whether the Board would make some other 24 finding with respect to the charge that the car is</p>	<p style="text-align: right;">Page 9</p> <p>1 permanent legal home of a person or the place to 2 which the person intends to return even though the 3 person may reside elsewhere. As a further 4 explanation -- this is another quote -- a person 5 may have more than one residence but only one 6 domicile. That's 635 ILCS 5/115.5.</p> <p>7 The evidence that I could glean from the 8 record was that the car was registered in 2012 9 while the investigation was underway and the car 10 was registered to an address on 96th Street that by 11 the testimony was not Officer Webb's address until 12 sometime before November of 2009.</p> <p>13 INS Riley testified -- it was a 14 gratuitous comment but it was in her testimony -- 15 that when Officer Webb left that address on 16 96th Street, it was because his roommate was 17 getting married and she suggested that he might 18 want to come and live with Ms. Sams who was her 19 aunt and needed -- could be served by having an 20 another officer, police officer, living in the 21 building at her address. Those facts gave me grave 22 concern so far as a remand for the following 23 reasons: 24 One, of course it was the</p>

<p style="text-align: right;">Page 10</p> <p>1 superintendent's burden to prove where 2 Officer McCarthy -- excuse me -- Officer Webb 3 resided, was domiciled in particular for purposes 4 of showing a violation of Section 3-405 (a)(1). 5 And the domicile that the superintendent 6 or the department set out to prove was that he -- 7 was he was domiciled at the suburban address. 8 Well, I don't think that was shown for 9 the reasons that I stated previously. That is that 10 the Board's finding was well within its province of 11 making factual findings. 12 And, so, technically, we had two 13 potential addresses for domicile. The one in 14 Chicago -- 15 MR. HERBERT: One was on 96th Street. 16 THE COURT: And one was on South Coles. Those 17 were the only two. Coles or suburban, those were 18 what was at issue. The 96th Street address -- 19 frankly, there is no evidence other than the 20 evidence I just recited from Ms. Riley's testimony 21 that that's where Officer Webb was living prior to 22 moving three years before when he left because his 23 roommate was getting married. So there I am. 24 That's the evidence.</p>	<p style="text-align: right;">Page 12</p> <p>1 It was his position throughout the 2 entire hearing that he, in fact, resided at 3 8016 South Coles. So I think it's clear and 4 undisputed that the car registration was at a 5 residence that was not his domicile address. 6 Based on what's in the record, I think 7 that the appropriate response of the Court finding 8 that the ruling was erroneous would be to remand 9 and ask that the Board issue any type of penalty 10 that would be necessary. 11 I know you briefly touched on it being 12 the superintendent's burden to prove where he 13 lived. Of course it was our position throughout 14 the time he lived with at a certain address. 15 Regardless, again, it was Webb's position he lived 16 at 8016. Neither of those addresses -- the 17 96th Street address he registered his vehicle at. 18 So I think based on the Board's finding, 19 it's been that he resided at 8016, not 96th Street. 20 I don't think that the Board needs to make any 21 further finding based on the evidence in that the 22 Court has remanded for a determination of what 23 penalty would be necessary for violation. 24 MR. HERBERT: I would state that I think that</p>
<p style="text-align: right;">Page 11</p> <p>1 So my issue is this has to be reversed 2 because the finding is erroneous as a matter of law 3 and now what do I do with respect to remand. 4 Remand for the Court to assess whether you need 5 additional penalty is required; or do I remand for 6 the Board to make a finding concerning whether or 7 not there has been a violation of that statute 8 based on -- violation of Rule 1, which in turn is 9 based on a violation of the statute based on not 10 providing the proper domicile on the car 11 registration? 12 So you can have a little opportunity to 13 respond to those two options. 14 MS. ZMICK: Your Honor, of course, our 15 position would be that because this is a de novo 16 review, you can certainly remand with specific 17 instructions for the Board to determine whether or 18 not a penalty is appropriate for a violation. 19 I think based on what you just read into 20 the record, there's significant evidence in the 21 record already to establish that Officer Webb 22 particularly, based on his own admission, was not 23 domiciled at the 96th Street address when he 24 registered his car there.</p>	<p style="text-align: right;">Page 13</p> <p>1 perhaps it should be sent back to the Board with an 2 opportunity to clarify its finding with respect to 3 that charge. 4 THE COURT: Well, I am reversing the finding 5 because it's an error as a matter of law, in my 6 opinion. So the question would be, then, what am I 7 sending it back for? 8 MR. HERBERT: I can't speak for the Board, 9 obviously, but I think that it can be inferred that 10 the Board did not believe that it was not -- did 11 not believe that it was shown beyond a 12 preponderance of evidence that the 96th Street 13 address was not necessarily his residence. 14 THE COURT: Domicile. 15 MR. HERBERT: Domicile. You know, I am not 16 sure -- that could certainly be a reason why the 17 Board simply, you know, the evidence in the record 18 doesn't support that theory being a possibility. 19 So again, I can't speak for the Board 20 but they clearly interpreted that it wasn't a 21 violation either because the evidence didn't prove 22 that he was not domiciled at that address or that 23 him changing it was in a timely manner. 24 So, you know, I am fine with remanding</p>

<p style="text-align: right;">Page 14</p> <p>1 it for a penalty. This case -- I mean, I don't 2 think the Board can rule on anything other than, 3 perhaps, a reprimand because it's something that 4 the Board knows is a fairly frequent occurrence 5 with police officers, you know. I don't think that 6 a penalty can be anything much more than that. 7 THE COURT: Okay. Well, here is what I am 8 going to do. I appreciate that because I agree. I 9 think the Board did make a finding, though. It 10 made a finding that since he changed it, there was 11 no violation. I think that's wrong. I think it's 12 wrong as a matter of law, but I will give them an 13 opportunity to make any finding that they find that 14 they deem appropriate based on the evidence that is 15 currently in the record as to whether a violation 16 of Rule 1 and Section 3-405(a)(1) occurred. 17 If they do find -- and these are the 18 conditions of the instructions in my order -- if 19 they do find that there was a violation on the 20 charge that involves the car registration, then 21 it's, of course, up to the Board to determine what, 22 if any, penalty is appropriate. All right? 23 But with respect to the charges that are 24 based on the residency, I find that the Board's</p>	<p style="text-align: right;">Page 16</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF COOK) 4 5 I, CARIANN WAGNER, a Certified Shorthand 6 Reporter of the State of Illinois, do hereby 7 certify that I reported in shorthand the 8 proceedings had at the hearing aforesaid, and that 9 the foregoing is a true, complete and correct 10 transcript of the proceedings of said hearing as 11 appears from my stenographic notes so taken and 12 transcribed under my personal direction. 13 IN WITNESS WHEREOF, I do hereunto set my 14 hand at Chicago, Illinois, this 17th day of 15 December, 2015. 16  17 18 Certified Shorthand Reporter 19 20 C.S.R. Certificate No. 084-003836. 21 22 23 24</p>
<p style="text-align: right;">Page 15</p> <p>1 decision is not against the manifest weight of the 2 evidence. It's not clearly erroneous and, 3 therefore, is remanded only with respect to that 4 one charge. 5 MR. HERBERT: Thank you. 6 THE COURT: You are welcome. 7 MS. ZMICK: Thank you, your Honor. 8 THE COURT: I should say for the reasons 9 stated on the record. 10 (Whereupon, the proceedings 11 concluded at 10:56 a.m.) 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	

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